

NAVSEA

WARFARE CENTERS

An aerial photograph of a coastal city, likely Panama City, showing a large harbor, a long bridge, and surrounding land with buildings and greenery. The image is partially obscured by a large blue circular graphic on the left side of the slide.

PERSONAL SERVICES CONTRACTS

Panama City

08 September 2006

PERSONAL SERVICES CONTRACTS

- ◆ REGULATORY GUIDANCE
 - ◆ FAR 37.104
 - ◆ 5 U.S.C. 2105
 - ◆ NAVSEA INST 4200.19
- ◆ Characterized by the Employer-Employee relationship it creates between the Government and the Contractor's Personnel
- ◆ Government is normally required to obtain employees under competitive appointment or other procedures required by civil service laws
- ◆ Personal services obtained by contract avoids these laws
- ◆ Agencies shall not award personal services contracts unless specifically authorized by statute (e.g. 5 U.S.C. 3109)

EMPLOYER-EMPLOYEE RELATIONSHIP

- An Employer-Employee relationship is determined one of two ways:
 - **Terms and conditions of a contract...or**
 - **When contractor personnel are subject to relatively continuous supervision and control from a Government employee**

- Each contract is judged on its own facts and circumstances with the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel?

TO DETERMINE WHETHER A CONTRACT IS PERSONAL OR NON-PERSONAL SERVICES, ASK THESE QUESTIONS:

- ❖ Is performance on site?
- ❖ Are principal tools and equipment furnished by the Government?
- ❖ Are services applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission?
- ❖ Are comparable services, meeting comparable needs, performed in the same or similar agencies using civil service personnel?
- ❖ Is the need for the type of services provided reasonably expected to last beyond 1 year?
- ❖ Does the inherent nature of the service, or the manner in which it is provided reasonably require direct or indirect Government direction or supervision of contractor employees in order to:
 - ❖ Adequately protect the government's interest or
 - ❖ Retain control of the function involved,
 - ❖ Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee?

EXAMPLES OF SITUATIONS THAT MAY CREATE A PERSONAL SERVICES CONTRACT

- ◆ A CONTRACTOR:
 - ◆ Acting as a Government employee's personal assistant
 - ◆ With a Government job title (Deputy Program Manager, Budget Analyst, etc.)
 - ◆ Supervising or tasking Government employees
 - ◆ Attending training at Government expense
 - ◆ Acting as the representative for a Government code or program office

- ◆ Government employees directing a contractor's work hours

TO ENSURE NSWC PC DOES NOT VIOLATE THE PROHIBITION AGAINST PERSONAL SERVICES CONTRACTS

- ❖ Contractors shall not be given job titles or NSWC PC codes for use in their capacity as a NSWC PC support contractor
- ❖ Contractors shall not have access to a Government employee's email account
- ❖ The Global Address List (GAL) shall include the notation "CTR" after the names of all contractor personnel
- ❖ Contractor badges shall be colored differently from Government badges
- ❖ Individual codes and offices must ensure contractor personnel are not listed on their staffing plans
- ❖ In order not to compromise sensitive Government or Contractor information, contractor access shall be limited to only information that is relevant for contract performance

NSWC PC ON-SITE CONTRACTORS

- ◆ 45 CONTRACTORS CURRENTLY EMPLOY ON-SITE WORKERS
 - ◆ **73 BASIC CONTRACTS WITH MULTIPLE TASK ORDERS**

- ◆ TO DATE 342 CONTRACTOR EMPLOYEES WORK AT NSWC PC
 - ◆ **264 SUPPORT MISSION AREAS**
 - ◆ **78 ASSIGNED TO OPERATIONS SUPPORT GROUPS**

- ◆ 292 CONTRACTOR EMPLOYEES WORK UNDER LOCALLY AWARDED CONTRACTS

- ◆ 50 EMPLOYEES HIRED UNDER OTHER ACTIVITIES EFFORTS

WHO TO CONTACT FOR GUIDANCE ON SPECIFIC CONTRACTS

- ❖ **CONTRACTORS:** Contact their Contracting Officer if they believe they are being asked to perform personal services
- ❖ **GOVERNMENT EMPLOYEES:** Contact either Legal Counsel or the Contracting Officer for guidance on personal services issues